IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 989 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? Yes

2 To be referred to the Reporter or not ? Yes

3 Whether their Lordships wish to see the fair copy of the judgment ? No.

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No.

5 Whether it is to be circulated to the civil judge ? No.

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JELUSINH GALABJI THAKOR & 6 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR YOGESH S LAKHANI for Appellant(s) : 1 - 7.
Mr.R.C.Kodekar, A.P.P. for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 22/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE MD SHAH)

1. The present appeal is filed against the judgment and order of conviction and sentence dated 13th August, 1997 passed by the learned Additional Sessions Judge, Banaskantha, District Palanpur, in Sessions Case no.55 of 1995. By the said judgment , the accused nos.1,2, 3 and 7 are awarded life sentence for the offence punishable under Section 302 read with Section 149, IPC and also imposed fine of Rs.100/-, in default, one year's rigorous imprisonment, the accused nos.1 to 7 are awarded life imprisonment for the offences punishable under Section 307 read with Section 149. They are also awarded two years simple imprisonment for the offence punishable under Section 323 read with Setion 149, all the accused were awarded two months rigorous imprisonment for the offences punishable under Section 147 read with Section 149,IPC all the accused were awarded one year's rigorous imprisonment for the offence punishable under Section 148 read with Section 149, all the accused were awarded four months rigorous imprisonment and also imposed fine of Rs.100, in default, one years rigorous imprisonment for the offences punishable under Section 135 of the Bombay Police Act, all the accused were acquitted for the offence punishable under Sections

324, 325, 504 read with Section 149 of I.P.C. It is also ordered by the learned Additional Sessions Judge that all the sentences shall run concurrently and also gave set off under Section 428 of the Criminal Procedure Code.

2. Brief facts of the prosecution case are as under:

2.1 The complainant Ranchodbhai Navaji and accused persons were residing at village Dhanpura, Taluka Deesa, District Banaskantha. On 16-11-1994, the accused no.4 slaughtered a goat for sale of mutton. Witness Moksingh son of deceased Hathesing went to purchase mutton from the accused no.4, but the accused no.4 refused to sell the mutton to him and for that reason an altercation took place between them. On 18-11-1994 one Gajraben wife of Thakore Agarsing Nathusing died. The complainant and his brother deceased Hathesingh Navaji went to the crematory to attend the funeral ceremony of Gajraben. The accused Jetuji Galabji, Ladhsingh Galabji and Tejsingh Gamansingh also came there to attend the funeral ceremony. While returning from the crematory these three accused met the complainant Ranchodbhai Navaji and at that time complainant told them not to create any

quarrel in connection with the incident of refusal to offer mutton on sale. Thereafter, these three accused went to their home and the complainant and his brother Hathesingh proceeded towards their house. At that time, Hathesingh was walking very fast and hence he was ahead of the complainant. When Hathesingh reached near the shop of Babar Nagji, complainant heard shouts, and he immediately rushed to the spot where he found the accused standing with deadly weapons like sword, dharia, sickle and sticks. The accused were abusing deceased Hathesingh and Madarsingh Navaji. Hathesingh asked them not to abuse them but the accused got enraged and the accused Magansingh Galabji inflicted two blows of dharia on the head of deceased Hathesingh, the accused Dhuksingh Magansingh inflicted two blows of sword on the head of Madarsingh Navaji who intervened to rescue Hathesingh. As a result of the scuffle that took place son of complainant, namely, Hirsingh wife of complainant Jababen, daughter of complainant Santubai, nephew of complainant Mobatsingh and son of complainant Ratansing rushed there and tried to save Hathesing and Madarsingh. At that time, the accused Maganji Galabji inflicted dharia blow on the head of Hirsingh and the accused Ladhsingh Maganji gave stick blow on the neck of Hirsingh, the accused

Ladhsingh also gave stick blow on the leg of Taraben and also on the left hand wrist of Jababen, the accused Maganji Galabji inflicted dharia blow on the right hand of Jababen, the accused Prabhatsingh inflicted dharia blow on the left hand wrist of Mobatsing Hathesing, the accused Jetsing Galabji inflicted a sickle blow on the head of Santuba, the accused Tejsingh Gamansingh gave stick blow on left hand of Ranjusingh, the accused Harpalsingh Tejsingh gave stick blow on the back side of the body of Mobatsingh. On hearing the shouts on account of scuffle that took place other persons came there for help. All the injured persons were shifted to the Civil Hospital, Deesa. Complainant lodged complaint before PSO, Deesa Rural Police Station and crime was registered vide Deesa Rural Police Station CR.No.279 of 1994 for the offences punishable under Sections 147, 148, 149, 307, 323, 324, 325, 504 and Section 135 of the Bombay Police Act. During the treatment, injured Hathesingh succumbed to his injuries and hence Section 302 of IPC was also incorporated. Thereafter, during investigation, the investigating officer recorded the statement of witnesses, drew Panchnama of scene of offence, arrest Panchnama, discovery Panchnama, inquest Panchnama etc. In the meanwhile the accused were arrested. Investigating Officer also sent the

Muddamal to the Forensic Science Laboratory for analysis and during the course of investigation charge-sheet was submitted on 14th February, 1995 before Judicial Magistrate, First Class, Deesa for the above mentioned offences and the same was registered as Criminal Case no.526 if 1999. The learned J.M.F.C. committed the case to the Court of Sessions by his order dated 27-3-1995. As the offences punishable under Sections 302 and 307 were exclusively triable by the Court of Sessions, the case was made out for trial before the learned Additional Sessions Judge for trial where it was numbered as Sessions Case no.55 of 1995. It is also pertinent to note that on the same day i.e. 18th November, 1994 the accused Maganji Galabji also lodged complaint in respect of the same incident before PSO, Deesa Rural Police Station and on the basis of the said complaint crime was registered vide Deesa Rural Police Station CR. no.280 of 1994 and charge-sheet came to be filed before the learned J.M.F.C, Deesa. This being a criminal case arising from the same incident, the learned J.M.F.C., Deesa, passed commital order whereby he commited the said case to the Sessions Court which was registered as Sessions Case no.111 of 1995. Both these Sessions cases were tried by the learned Additional Sessions Judge, Palanpur. Charge was framed vide Exh.3 for the offences

punishable under Sections 147, 148, 504, 307, 302, 323, 324, 325 read with Section 149 , IPC and Section 135 of the Bombay Police Act. The accused pleaded not guilty to the charge and claimed to be tried. In order to prove its case against the accused, the prosecution had examined in all 18 witness, namely, Ranchodji Navaji (complainant) Exh.40, Rangatsingh Ranchodji (injured) Exh.56, Hirsingh Ranchodji(injured) Exh.59, Mohabatsingh Hathesingh (injured) Exh.61, Taraben Hathesingh(injured) Exh.67, Santuba Ranchodji(injured) Exh.68, Jababen Ranchodji(injured) Exh.69, Nagjibhai Kodabhai Exh.29, Karsanbhai Exh.42, Mavjibhai Kalidas Exh.48, Mafabhai Ajbabhai Exh.52, Pratap Dharmaji Exh.86, Bhijolji Chhatraji Exh.97, Vinayakrav Vasudev Ravpatil Exh.27, Dhirajbhai Devabhai Jagania Exh.30 Jeetendra Ratilal Modi Exh.64, Jethabhai Nanjibhai Exh.71, and Bhopalsingh Kesharsingh Exh.74. The prosecution has also produced documentary evidence like complaint Exh.75, Inquest Panchnama Exh.14, Seizure Panchnama of the house of the accused vide Exh.15, 16 and 17, Panchnama of recovery of clothes worn by deceased Hathesingh and injured Madarsing Navaji at the time of incident Exh.18, Panchnama of recovery of clothes worn by injured Thakore Madaji Navaji Exh.19, complaint lodged by Magansingh Galabji the accused no.2 against

the complainant and other witnesses at Exh.20,injury certificate of one Hiraben Magansingh Exh.25, injury certificates of accused, namely, Dhukaji Maganji Exh.21, Maganji Galabji Exh.22, Tejsingh Gamansingh Exh.23, Jetubhai Galabji Exh.24 and Harpalsingh Tejsingh Exh.26, postmortem note of deceased Hathesingh, injury certificates of deceased Hathesingh Navaji and other injured persons Exhs.31 to 38, discovery Panchnama of weapon from Maganji Galabji Exh.43, discovery Panchnama of weapons from the other accused nos.1 to 4 Exh.49, injury certificate of Madarji Navaji Exh.65, death certificate of Hathisingh Navaji Exh.72, Yadi to PSO Exh.75, complaint lodged by Ranchodbhai Exh.75, Panchnama of scene of offence Exh.77, forwarding letter with reports of FSL and Serologist Exhs.85 and 86, map of scene of offence Exh.88, Notification under Section 37(1) of the Bombay Police Act.

3. After the recording of evidence of prosecution witnesses was over further statement of the accused under Section 313 of the Criminal Procedure Code came to be recorded wherein the accused had denied their involvement in the incident and all the accused had submitted written submissions at Exh.99. According to them, the complainant and injured witnesses attacked Dhuksingh with

sticks and when Dhukhsingh and his wife shouted for help, other accused came there to rescue Dhukhsingh and they also attacked and in this incident accused had also received injuries.

4. After hearing the learned A.P.P., the Advocate for the accused and after appreciating the oral as well as documentary evidence, the learned Additional Sessions Judge held that the prosecution has established the charges levelled against the accused beyond reasonable doubt, and therefore, passed the judgment and order of conviction and sentence as referred to in para-1 of the judgment, giving rise to the present appeal.

5. We have heard learned Advocate Mr. Yogesh Lakhani, learned Counsel for the appellants-accused and Mr.R.C.Kodekar, learned A.P.P. for the respondent-State. Mr. Yogesh Lakhani, learned Counsel for the appellants argued that the deceased and injured eye-witnesses were the aggressors inasmuch as the incident in question had taken place in order to take revenge over an incident that took place between the son of the deceased and the appellant prior to two days and that the injuries were received by the deceased and the witnesses in self defence. The learned Counsel

next submitted that there are material contradictions, omissions and improvements in the evidence of the witnesses which creates doubt about the entire case of the prosecution. According to the learned Counsel the evidence of injured eye witnesses is in total conflict with that of medical evidence and that they are all related or interested witnesses. The learned Counsel next submitted that there was a free fight between the complainant's side and that of the accused and in that incident the appellants accused have also received injuries, and therefore, the case would not fall under Section 149, IPC. According to him, the learned Judge has materially erred in holding that the deceased and injured witnesses received more serious injuries than that received by the accused, and therefore, the appellants-accused being aggressors are liable for punishment under Section 149,IPC. The learned Counsel next submitted that though there were independent witnesses no independent witnesses were examined by the prosecution, but only related and interested witnesses have been examined which again creates doubt about the case of the prosecution. Learned Counsel next submitted that the accused no.2 had inflicted only one blow on the head of the deceased, and therefore, Section 302,IPC would not be attracted and that at the most the case would fall under

Section 304, Part II, IPC. According to the learned Counsel, the learned trial Judge having not considered all these aspects has committed error in convicting the appellants-accused, and therefore, the appeal should be allowed and sentenced imposed should be suitably reduced.

6. Learned A.P.P. Mr. R.C.Kodekar while supporting the judgment of the learned trial Judge in toto has submitted that the learned trial Judge has rightly appreciated the evidence and arrived at a just and proper conclusion in convicting the appellants-accused and the same is not required to be interfered with. According to him the evidence of all the eye witnesses inspire confidence and there is no reason to discard such evidence. He, therefore, prayed that the appeal should be dismissed.

7. We have heard the learned Counsel for the parties and taken into consideration the entire evidence on record. We now proceed to discuss the evidence of material witnesses. It is not in dispute that there was a free fight between the complainant and others on one side and the accused on the other. PW 2 Nagji Kodabhai, in his depostion Exh.29 had stated that prior to four days from the

incident there was heated exchange of words between Ladhsingh and Moksing. On the day of incident wife of one Agarsingh Nathusingh had died where family members of the accused persons as well as that of the complainant's side were present at the crematory. Nothing untwoard happened there and all of them left for their respective houses. On the way, this witness had told Magansingh, Jetusingh and Tejsingh not to create any quarrel. Thereafter when this witness and Hathesingh reached near the shop of Nagji, they met Madarsingh and all of them were standing there. At that time the accused nos.1 to 7 came there armed with weapons. The accused no.1 was armed with sickle, the accused no.2 Maganji was armed with dharia, the accused no.3 Dhukhsingh was armed with sword, the accused no.4 Ladhsingh was armed with a stick, the accused no.5 Prabhatsingh was armed with a dharia, the accused no.6 Tejsingh was armed with a stick and accused no.7 Harpalsingh was armed with a stick. This witness has further stated that all of a sudden, the accused persons got wild and the incident took place. The accused no.2 Magansingh Galabji inflicted two dharia blows on the head of Hathesingh. Thereupon his son, Hirsingh intervened and the accused no.2 inflicted one dharia blow on him also. Madarsingh then intervened and at that

time Dhukhsingh Magansingh gave two sword blows on the head of Madarsingh. His nephew Moksingh intervened and on hearing shouts, his son Rangatsingh, Taraben and the wife of this witness Jababen and his daughter Santubha rushed to the spot. At that time, Ladhsingh Magansingh gave one stick blow on the neck of Hirsingh and another stick blow on Taraben, Tejsingh had given one stick blow on the hand of Rangatisngh.s Harpalsingh gave one stock blow on the back portion of Moksingh, Jetusingh gave one sickle blow on the head of Santubha and Maganji had given dharia blow on the hand of Jababen. According to this witness, there was a fight between the complainant's side and that of the accused. In his police statement also he has clearly stated that Thakores of their village had fought with each other. PW 4 complainant Ranchodbhai in deposition at Exh.14 had stated similar version as deposed by PW 2 Nagji Kodabhai with regard to the occurrence of the incident as also the use of weapons by each of the accused to cause injuries to the deceased and respective injured eye-witnesses. PW 8 in his deposition before the Court at Exh.56 has stated that on hearing shouts from the shop of Nagjibhai Kodabhai he went there and saw the accused causing injuries with weapons to the deceased Hathesing and other witnesses. According to this witness, he also

received injuries. According to him, the accused Jetusing had caused injury on the palm and left hand of this witness. This witness has also narrated the occurrence of the incident, use of the weapons by the respective accused and causing of injuries to the deceased and injured eye-witnesses as deposed to by PW 2 Nagjibhai Kodabhai. In his cross examination, this witness has stated that the incident in question took place four days after a quarrel had taken place regarding refusal to sell mutton. He admitted that in between these four days no quarrel took place between the complainant's side and that of the accused. He has categorically stated that when he reached the scene of incident fight was going on. PW 9 Hirsing Ranchodbhai injured witness stated on oath before the Court that as accused had caused injuries to deceased Hathesing and Madarsing there was commotion resulting which he and other witnesses went there to provide help. He has admitted that the accused party also lodged complaint regarding the incident in question against the complainant's side which is pending as Sessions Case no.111 of 1995 wherein he is also an accused. He also admitted in his cross examination that he had never seen the accused hiding behind the babul tree, but when he reached the spot accused were beating the complainant's side and

the fight was going on. This witness has also narrated the occurrence of the incident, the use of the weapons by the respective accused and causing of injures to the deceased and injured eye-witnesses as deposed to by PW 2. He has clearly stated that none other than the persons from the complainant side and that of the accused came there for rescue. PW 10 Mobatsingh injured witness and son of deceased Hathesingh had stated in his deposition at Exh.61 that on hearing the commotion, he went to the spot and when he reached there fight was going on. This witness has also narrated the occurrence of the incident, the use of the weapons by the respective accused and causing of injuries to the deceased and injured eye-witnesses as deposed to by PW 2 Nagjibhai Kodabhai. According to him, he received injuries on the back portion of his body inflicted by accused Harpalsingh with stick. He also sustained dharia blows caused by accused Prabhatsingh. He admitted that when he reached the scene of offence, 7 to 8 persons from each side were present there i.e. the complainant side and that of the accused and accordingly a mob of 14 persons were present at the spot. He also admitted that accused Magansingh Galabji lodged complaint against them and he is also one of the accused in that case. PW 12 Taraben Hathisingh injured eye-witness has stated on oath before

the Court at Exh.67 that while she and Jababen were returning from the house of Gajraba and when they reached the shop of Babar Nagji, the accused persons were beating her husband and when she intervened, she also received injuries. According to her they were not beating complainant Ranchodji who happened to be brother of deceased Hathisingh. This witness has also narrated the occurrence of the incident, the use of the weapons by the respective accused and the causing of injuries to the deceased and injured eye-witnesses as deposed to by PW 2 Nagjibhai Kodabhai. She also admitted that when she and Jababen shouted for help other persons from their side came there. PW 13 injured witness in her deposition on oath before the Court at Exh.68 has stated that on hearing the commotion, she and others persons went to the spot and they all were beaten by the accused persons. This witness has also narrated the occurrence of the incident, the use of the weapons by the respective accused and the causing of injuries to the deceased and injured eye-witnesses as deposed to by PW 2 Nagji Kodabhai. According to her accused Harpalsingh had inflicted stick blows on the back portion of her body. In cross examination, he had stated that on account of the fight there was commotion. PW 14 Jababen in her deposition on oath before the Court at Exh.69 has stated that

when she and Taraben were passing from near the shop of Nagji Babar, the accused persons were beating the complainant Ranchodbhai by using weapons. According to her, accused Ladhsingh caused injury on her left hand wrist. She also admitted that because of commotion, other persons from their side came there and they also sustained injuries. She admitted that complainant Ranchodbhai was not beaten by any of the accused during the whole incident. This witness has also narrated the occurrence of the incident, the use of the weapons and the causing of injuries to the deceased and the injured eye-witnesses as deposed to by PW 2 Nagjibhai Kodabhai. In her chief-examination, she has stated that the accused persons have not received any injury in this fight. PW 16 Bopal Kesarisingh Investigating Officer in his deposition at Exh.74 has stated that on 18-11-1994 when he came to the Police Station, he knew that Thakores of Dhanpura had quarrelled with each other and were admitted in hospital. According to him, he immediately went to the hospital where complainant Ranchodji lodged complaint before him in the hospital which is at Exh.72. He admitted in his cross-examination that when he reached the hospital injured persons from the side of the accused were also admitted in the hospital whose names were Dhukji,

Magansingh, Harpalsingh, Jetusingh and Tejsingh. He also admitted that from the accused side also complaint was lodged against the complainant and other persons of the complanant's side which was registered as Crime Register no.280 of 1994 and he himself had carried out the investigation of the said offence. He also admitted that the incident had taken place on the way which was used by the residents of Dhanpura for going to their fields.

8. PW 1 Dr. Vinayakrav Vasudevrav Patil, who conducted the postmortem (Exh.28) of the dead body of the deceased has stated in his deposition at Exh.27 that he found four external injuries on the dead body of deceased Hathesingh, namely, (1) Red colour bruise on right side of head size 3.5 cm. x 3.0 cm, at parietal region. (2)Red coloured bruise on left parietal region of head size 3.0 x 3.0 cms. (3) A longitudinal surgically stitched wound on top of head near midline on little left side size 9.5 cms. Long and (4) A superficial incised wound on back of right shoulder vertical in direction of size 5.5. x 5.0 skin deep. Dried blood clot in external injury no.3 and 4 and inflammation seen in all injuries. The Doctor has also found five internal injuries. According to the Doctor, the deceased Hathesingh had died due to shock as a result of head

injury. The Doctor has opined that injuries nos.3 and 4 is possible by dharia and injuries nos.1 and are possible by means of stick He also opined that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death. PW 5 Karsanbhai Naranbhai (Panch Wintess) in his deposition at Exh.42 has stated that at the instance of Manganji and -the accused no.2 the Muddammal articles dharia, sword and stick were recovered under discovery Panchnama Exh.43.

10 The learned Sessions Judge held that there was a free fight between the persons from the complainant's side and the persons from the side of the accused, but as the persons from the complainant's side received more injuries than the injuries received by the accused persons, the accused were the aggressors and they were held members of unlawful assembly, and therefore, held the accused guilty for the offences punishable under Sections 147, 148, 302, 307 and 323 read with Section 149, IPC. It is pertinent to note that to prove the charge under Section 149, IPC, the following three conditions must be established (1) there must be an unlawful assembly of five or more persons, (2) the assembly must have a common object and (3) the common object must be to commit one

of the five illegal objects specified in Section 141, IPC. In this context, if we discuss the evidence given by the learned Sessions Judge, the learned Sessions Judge on one hand held that there was a free fight between the parties and on the other hand, the learned Sessions Judge held that as the persons from complainant's side received more injuries, the accused persons were the aggressors, and accordingly, the accused were held to be members of the unlawful assembly. Except this, no findings have been given by the learned Sessions Judge to prove the charge under Section 149,IPC. It transpires from the evidence of PW 16 Bhopal Kesarisingh, Investigating Officer, that when he came to the Police Station on 18th November,1994, he knew that Thakores of Dhanpura had quarrelled with each other and were admitted in hospital. He also deposed on oath that when he reached the hospital, the injured persons from the side of the accused were also admitted in the hospital. He also admitted that from the accused side also complaint was lodged against the deceased, complainant and other persons of the complainant's side which was registered as Crime Register no.280 of 1999, and according to him, these offences also arise from the incident for which complainant lodged complaint against the present accused. He also admitted that he himself had

carried out the investigation of said offence and charge-sheet was also filed against the persons of complainant's side. As per the submission of the learned Advocate for the appellant in the said case they have been acquitted. It is also admitted by the Investigating Officer that incident had taken place on the way which was used by the residents of Dhanpura for going to their fields. As diecussed earlier, it transpires from the evidence of other witnesses that there was commotion and on hearing shouts, they reached where the fight was going on. We are therefore constrained to hold that the learned Additional Sessions Judge has committed error in holding that the accused are members of an unlawful assembly and convicted them under Section 148 read with Section 149, IPC. In cases of sudden mutual fight between the two parties there can be no question of invoking the aid of Section 149 for the purpose of imposing constructive criminal liability on an accused. The accused in such a case can be convicted only for the injuries caused by him for his individual acts. When it is held that the accused are not members of an unlawful assembly they cannot be held liable for offence under Sections 147 and 148, IPC as well. We are fortified in our view by the decision rendered by the Honourable Supreme Court in the case of **Ishwarsingh v. The**

State of Uttar Pradesh (AIR 1976 SC 2423) wherein it has been held that there is no common object in a “free fight” and the accused in such a case cannot be convicted by having recourse to Section 149,IPC. Keeping in mind the undisputed fact that there was a free fight between the complainant's side on one hand and that of the accused on the other. We, are therefore of the view that each accused would be liable for their individual act. More so in view of the fact that there is no evidence on record to indicate that any of the accused had indicated their intention to kill the deceased or to cause bodily injuries to the witnesses and in furtherance of that common object had assaulted the deceased and the witnesses. The role played by the accused is not such which could be made a basis of their holding a common intention in committing the crime of murder in furtherance of a common object. Even the quarrel over refusal to sell mutton to the son of the deceased had taken place four days prior to the incident in question and the real genesis of the incident in question is not coming forth on record. It is worthwhile to note that even at the crematory nothing untowards had happendd even though members of the complainant's side as well as that of the accused were present. In that view of the matter, we are of the opinion that the conviction of all the appellants for

the offence punishable under Section 147 read with Section 149 and Section 148 read with Section 149, IPC is liable to be quashed and set aside. There being no appeal preferred by the State the acquittal of all the appellants for the offences punishable under Sections 324, 325 and 504, IPC is required to be retained.

10. Having closely scrutinized the evidence of the prosecution witnesses, it is clearly established that all the accused were present at the scene of offence at the time of incident. No evidence whatsoever has been brought by the defence to doubt their presence at the time of the incident. That the deceased Hathesingh died a homicidal death is not in dispute. The prosecution witnesses have all narrated the entire incident in a very natural and realistic manner. So far as the contention of the learned Counsel that the injured eye-witness are related to each other and that they are all interested witnesses is concerned, the so called familiarity with the deceased itself does not render per se their evidence suspect. All that is required to be done in such cases is to carefully analyse the evidence and if after deeper scrutiny, it is found acceptable to act on it. The trial Court has done that. Nothing infirm could be pointed out as to how the evidence suffers from any unreality or

infirmity in law. The so called minor omissions or contradictions which have been brought out by the defence to the effect that Hirsingh in his evidence has stated that Hathising was walking ahead of Ranchodji instead of stating that Fatesingh was ahead of Ranchodji while in his police statement he has stated that Fatehsingh was walking ahead of Rachodji, is not material which would make their evidence unreliable. Similar is the case with the contradiction brought in by the defence that according to the evidence of Dr.Jaganiya there was only one injury of dharia blow on the head of Madarsingh while all the witness have stated that there were two injuries. It transpires from their evidence that the accused no.2 Maganji Galabji Thakore had caused two head injuries to the deceased Hathesingh by means of dharia, the accused no.2 had also caused an injury on the head of Hirsingh by means of dharia, he had also caused an injury on the right hand wrist of Jababen by means of dharia. The accused no.3-Dhuksingh Magansingh Thakore had caused two head injuries to Madarsingh by means of a sword. The accused no.1 Jethusingh Galabji Thakore had caused a head injury to Santuba by means of a sickle. The accused no.4 had caused an injury on the right hand wrist of Jababen by means of a stick. He had also caused stick blow on the

thigh of Taraben and on the neck portion of Hirsingh. The accused no.5 Prabhatsingh Magansingh Thakore had caused injury to Mohabatsingh by means of a dharia blow on the right hand wrist. The accused no.6 Tejsingh Gamansingh Thakore had caused injury on the palm and back portion of Rangatsingh. The accused no.7 Harpalsingh Tejsingh Thakore had caused injury on the back portion of the body of Mohabatsingh by means of a stick. The P.M.Note Exh.28 shows that the cause of death of deceased Hathesingh is due to shock as a result of head injury. The injury certificate issued by Medical Officer, Government Hospital, Deesa shows that injuries on the head of deceased Hathesing is caused by sharp cutting instrument and by hard and blunt substance. PW 3 Dr. Vinayakrav Vasudev Patel in his evidence at Exh.27 had stated that the injuries sustained by deceased Hathesing is possible by muddammal articles dharia and stick and that these injuries are sufficient in the ordinary course of nature to cause death. So far as injured Madarsingh is concerned, the injury certificate shows that his condition was very serious, there was exposed brain matter and his total brain system has been disturbed and till today he is in a paralytic condition having lost all his senses.

11. Thus taking into consideration all the aspects of the matter, we are clearly of the opinion that the prosecution has established through the evidence of proseciution witnesses the involvement of the accused in the offence beyond all reasonable doubt. In our opinion the evidence of the above prosecution witnesses is natural, credible and reliable. Barring few minor discrepancies or omissions in the evidence of the above prosecution witnesses as also the medical evidence, they have remained consistent in their evidence. As cited above, the so called contradictions and or omissions in their evidence as tried to be suggested by the learned Advocate for the appellants are too trifle and they have no reason to falsely involve the accused, and therefore, such contradictions and omissions are required to be ignored. It would be appropriate to mention here that even if a major portion of evidence of witnesses is found to be deficient, in case the residue is sufficient to prove the guilt of the accused, conviction can be maintained. Duty of the Court is to separate grain from the chaff and appraise in each case as to what extent the evidence is worthy of acceptance. The evidence of the witnesses, the discovery Panchnama and the other evidence on record sufficiently and convincingly point to the guilt of the accused. In view of the above discussion we are in total

agreement with the findings recorded by the learned Judge that the accused had assaulted the deceased and other injured witnesses with the respective weapons as discussed above, causing serious injuries to the witness and the deceased, resulting in untimely death of the deceased.

12. The next question which arises for consideration is what offence each of the accused has committed and the quantum of punishment or reduction in sentence. The accused no.2-Maganji Galalbji Thakore had used deadly weapon dharia and caused two injuries on the vital part, namely, head of the deceased, as a result of which the deceased died, and therefore his conviction under Section 302, IPC is perfectly justified and no leniency can be shown as the case against the accused no.2 does not fall under Section 304, Part II. The accused no.3-Dukhsingh Magansingh Thakore had used deadly weapon sword and caused two injuries on the head of Madarsingh resulting which he had lost all his senses and is still in paralytic condition, and therefore, he is liable to be convicted under Section 307, IPC. The accused no.1, 4, 5, 6 and 7 is required to be convicted for the offence punishable under Section 323, IPC looking to the nature of the injuries.

13. For the foregoing reasons, the appeal is partly allowed. The impugned judgment and order of conviction and sentence dated 13-8-1997 passed by the learned Additional Sessions Judge, Banaskantha at Palanpur is modified to the extent that :

(i) The conviction of all the appellants for the offence punishable under Sections 147 read with Section 149 and Section 148 read with Section 149, Indian Penal Code is quashed and set aside. The acquittal of all the appellants for the offences punishable under Sections 324, 325 and 504, IPC is retained.

(ii) The accused no.2 is convicted for the offence punishable under Section 302,IPC and is ordered to suffer imprisonment for life and fine of Rs.100/- , in default, one years R.I.

(iii) The accused no.3 is convicted for the offence punishable under Section 307, IPC and is ordered to suffer imprisonment for life.

(iv) The accused nos.1, 4,5, 6 and 7 is convicted for the offence punishable under Section 323, IPC and is ordered to suffer two months R.I.

(v) The conviction and sentence of all the accused under Section 135 of the Bombay Police Act is retained.

(vi) The order to the effect that all the sentences shall run concurrently as also the set off is retained.

(vii) Muddammal is ordered to be disposed of as per the direction of the trial Court in the impugned judgment.

(R.P.Dholakia,J.)

(M.D.Shah,J.)

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